

information from Kay. Further, because some of the Bureau's answers to previous interrogatories are clearly irrelevant to Interrogatory 6-4, *e.g.*, the Bureau's answers to Interrogatories 2-7 and 2-8, it is impossible for Kay to ascertain the meaning of the Bureau's answer to Interrogatory 6-4. Accordingly, the Bureau should be ordered to respond completely and specifically to the interrogatory.

Kay would find to be complete in scope and detail an answer which stated that: The relevant facts which led the Commission to request information to enable the staff to determine Kay's compliance with the channel loading requirements of the Commission's rules are the following: [followed by a list of the relevant facts].

Interrogatory 6-5: The interrogatory requested that the Bureau "state all relevant facts which led the Commission to request information regarding the stations for which Kay holds licenses as well as those he manages to enable the staff to determine Kay's compliance with the construction and operation requirements of the Commission's rules". The Bureau's answer of "see response to previous interrogatories" was incomplete and not fully responsive to the interrogatory. In its response to previous Interrogatory 6-1, the Bureau stated that it had "received a number of complaints (including those attached hereto bearing dates prior to January 21, 1994)". However, the Bureau did not state that the complaints which it attached to its answers to Kay's interrogatories were all of the complaints which it had received. It would appear clearly from other answers by the Bureau that it possesses other complaints, the facts of which it failed to disclose in response to Kay's interrogatories. The Bureau also did not state

that the complaints which it attached to its answers included all of the relevant facts which led the Commission to request information from Kay. Further, because some of the Bureau's answers to previous interrogatories are clearly irrelevant to Interrogatory 6-5, *e.g.*, the Bureau's answers to Interrogatories 2-7 and 2-8, it is impossible for Kay to ascertain the meaning of the Bureau's answer to Interrogatory 6-5. Accordingly, the Bureau should be ordered to respond completely and specifically to the interrogatory.

Kay would find to be complete in scope and detail an answer which stated that: The relevant facts which led the Commission to request information regarding the stations for which Kay holds licenses as well as those he manages to enable the staff to determine Kay's compliance with the construction and operation requirements of the Commission's rules are the following: [followed by a list of the relevant facts].

Interrogatory 7-1: The Bureau's reference to its answer to Kay's Interrogatory 6-1 was incomplete and not responsive to Interrogatory 7-1. Interrogatory 7-1 requested that the Bureau "state each relevant fact which led the Commission to request that Kay substantiate the loading of his stations as of a date on or after a particular date during January 1994." None of the complaints attached to the Bureau's answers concerned loading of Kay's stations during January 1994 or any time proximate to January 1994. Since the complaints supplied by the Bureau could not be resolved by loading data as of a date on or after a particular date during January 1994, the Bureau's answer could not have been complete or responsive. Therefore, the Bureau should be compelled to respond fully and completely to the interrogatory.

Kay would find to be complete in scope and detail an answer which stated that: The relevant facts which led the Commission to request that Kay substantiate the loading of his stations as of a date or after a particular date during January 1994 are the following: [followed by a list of the relevant facts].

Interrogatory 7-2: The Bureau's answer to Interrogatory 7-2 was not complete. The basis for objection asserted by the Bureau was without merit. The requested information may lead to admissible evidence. Paragraph seven of the HDO stated that "Kay was later assured that proprietary information would be considered confidential." The issue designated at paragraph 10 a) of the HDO is "whether Kay violated Section 308(b) of the Act and/or Section 1.17 of the Commission's Rules by failing to provide information requested in his response to the Commission inquiries." The interrogatory is directly relevant to the meaning and the validity of the statement quoted from paragraph seven of the HDO. The information requested is directly relevant to Kay's position concerning exculpation or mitigation in the instant proceeding, *see, Normandy Broadcasting Corp.*, 8 FCC Rcd. 1, 2 (I.D. 1992) (Sippel, J.)

At paragraph five of its Opposition to Motion for Protective Order in the instant matter, filed on March 14, 1995, the Bureau indicated that it intended to disseminate the information concerning the identity of Kay's customers "to potential or actual witnesses".² Since the Bureau

² Since the Bureau has failed to comply with the Presiding Judge's order to provide a list of witnesses, it would be no answer for the Bureau to argue that the names of actual witnesses should be withheld from Kay.

has admitted that it intends to disseminate information concerning Kay's customers to other persons, the information which is requested by the interrogatory is plainly within the scope of permissible discovery and relevant to the designated issues. For all the foregoing reasons, the Bureau should be ordered to respond fully and completely to the interrogatory.

Kay would find to be complete in scope and detail an answer which stated that: Members of the Commission staff intended to distribute copies of the customer lists and telephone numbers which the Commission staff requested from Kay to each of the following persons: [followed by a list of the identities of the persons.]

Interrogatory 7-3: The Bureau's answer was not complete. The basis for objection asserted by the Bureau is without merit. The requested information may lead to admissible evidence. Paragraph seven of the HDO stated that "Kay was later assured that proprietary information would be considered confidential." The issue designated at paragraph 10 a) of the HDO is "whether Kay violated Section 308(b) of the Act and/or Section 1.17 of the Commission's Rules by failing to provide information requested in his response to the Commission inquiries." The interrogatory is directly relevant to the meaning and the validity of the statement quoted from paragraph seven of the HDO. The information requested is directly relevant to Kay's position concerning exculpation or mitigation in the instant proceeding, *see, Normandy Broadcasting Corp.*, 8 FCC Rcd. 1, 2 (I.D. 1992) (Sippel, J.) Therefore, the Bureau should be directed to answer the interrogatory.

Kay would find to be complete in scope and detail an answer which stated that: The Commission has distributed copies of the letter from Mr. Hollingsworth to Kay dated January 31, 1994 to each of the following persons: [followed by a list of the identities of the persons.]

Interrogatory 7-4: The Bureau's answer was not complete. The basis for objection asserted by the Bureau is without merit. The requested information may lead to admissible evidence. Paragraph seven of the HDO stated that "Kay was later assured that proprietary information would be considered confidential." The issue designated at paragraph 10 a) of the HDO is "whether Kay violated Section 308(b) of the Act and/or Section 1.17 of the Commission's Rules by failing to provide information requested in his response to the Commission inquiries." The interrogatory is directly relevant to the meaning and the validity of the statement quoted from paragraph seven of the HDO. The information requested is directly relevant to Kay's position concerning exculpation or mitigation in the instant proceeding, *see, Normandy Broadcasting Corp.*, 8 FCC Rcd. 1, 2 (I.D. 1992) (Sippel, J.) Therefore, the Bureau should be directed to answer the interrogatory.

Kay would find to be complete in scope and detail an answer which stated that: The Commission distributed copies of the letter from Mr. Hollingsworth to Kay dated January 31, 1994 to each of the following persons on the following dates: [followed by a list of the identities of the persons, associated with the dates on which the copies were sent to each.]

Interrogatory 10g-1: The Bureau's answer was incomplete and not responsive to the interrogatory. Paragraph 10(g) of the HDO directs the Presiding Judge to determine "whether James A. Kay, Jr. is qualified to remain a Commission licensee." The interrogatory seeks a statement of fact as to each of the qualifications which the Commission alleges that Kay lacks to remain a Commission licensee. By way of example, but not of limitation, Section 308(a) of the Communications Act of 1934, as amended, states that all applications "shall set forth such facts as the Commission by regulation may prescribe as to the citizenship, character, and financial, technical, and other qualifications of the applicant to operate the station." The interrogatory merely requests that the Bureau identify which required qualification or qualifications from those among that list, or any other list, the Commission alleges that Kay lacks. Accordingly, the Bureau should be directed to respond fully to the interrogatory by identifying the required qualification or qualifications which the Commission alleges that Kay lacks.

Interrogatory 10h-1: The Bureau's answer was not responsive to the interrogatory. While the Bureau was correct in stating that "the licenses of all of Kay's stations, including those that he owns, operates and controls, are in issue," that answer was incomplete and not responsive. Interrogatory 10h-1 requested that the Bureau "identify each and every license the Commission alleges to have cancelled automatically as a result of a violation" of certain Commission Rules. The Bureau's answer could have been complete and responsive only if it should be interpreted as stating that the Commission alleges that the licenses of all of Kay's stations, including those that he owns, operates and controls, have cancelled automatically.

Accordingly, the Bureau should be ordered to respond to the interrogatory completely and with particularity. Kay would find to be complete an answer by the Bureau which stated that: The Commission alleges that the following licenses have cancelled automatically as a result of a violation of Section 90.155, 90.157, 90.631, or 90.633 of the Commission's Rules: [followed by a list of the relevant call signs].

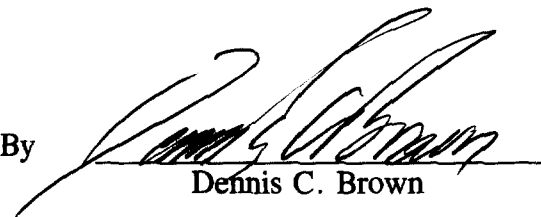
Section 1.323(d) of the Commission's Rules, 47 C.F.R. §1.323(d), provides that "if an answer does not comply fully with the requirements of this section, the presiding officer may . . . specify any appropriate procedural consequences (including adverse findings of fact and dismissal with prejudice) which will follow from the failure to make a full and responsive answer. In the matter of Faith Center, Inc., 53 RR 797 (ALJ 1983) (Faith Center), the presiding judge dismissed the renewal application of a licensee which refused to supply complete information in response to discovery requests in a hearing proceeding. The Bureau has refused to supply complete information in response to numerous of Kay's interrogatories. Accordingly, Kay respectfully requests that the Presiding Judge, in accord with the precedent set by Faith Center, caution the Bureau that continued failure by the Bureau to participate fully and completely in discovery will result in dismissal of the above captioned matter with prejudice.

Conclusion

Kay respectfully requests that the Presiding Judge order the Chief, Wireless Telecommunications Bureau, to respond completely to Kay's First Set of Interrogatories in the above captioned matter.

Respectfully submitted,
JAMES A. KAY, JR.

By

A handwritten signature in black ink, appearing to read "Dennis C. Brown", is written over a horizontal line.

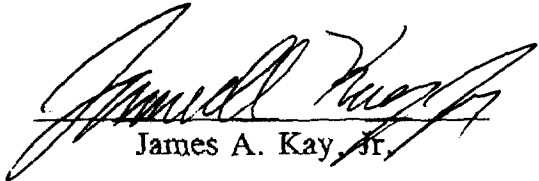
Dennis C. Brown

Brown and Schwaninger
1835 K Street, N.W.
Suite 650
Washington, D.C. 20006
202/223-8837

Dated: March 17, 1995

DECLARATION OF JAMES A. KAY, JR.

I declare under penalty of perjury that the foregoing Motion to Compel Discovery is true and correct. Executed on March 3/16, 1995.


James A. Kay, Jr.

Before the
COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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ORDER

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Released:

On March 17, 1995, James A. Kay, Jr. (Kay) filed a Motion to Compel Discovery in the above captioned matter. The Chief, Wireless Telecommunications Bureau, filed a timely Opposition.

For good cause shown, after full consideration of the positions of the parties, Kay's Motion to Compel Discovery will be granted.

IT IS ORDERED that the Chief, Wireless Telecommunications Bureau, shall, within ten days of the release of this Order, serve on counsel for Kay full and complete answers to each of the interrogatories included within Kay's First Set of Interrogatories.

FEDERAL COMMUNICATIONS COMMISSION

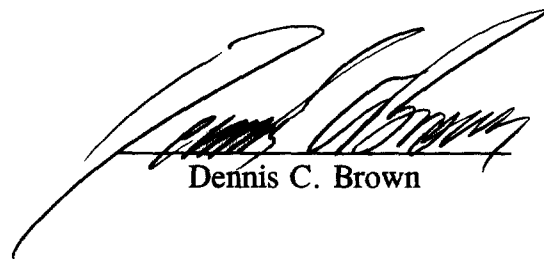
Richard L. Sippel
Administrative Law Judge

CERTIFICATE OF SERVICE

I, hereby certify that on this 17th day of March, 1995, I served a copy of the foregoing Motion to Compel Discovery on each of the following persons by placing a copy in the United States Mail, first-class postage prepaid:

Gary P. Schonman, Esquire *
Federal Communications Commission
Hearing Branch
Mass Media Bureau
Suite 7212
2025 M Street, N.W.
Washington, D.C. 20554

W. Riley Hollingsworth, Esquire
Deputy Associate Bureau Chief
Office of Operations
Federal Communications Commission
1270 Fairfield Road
Gettysburg, PA 17325



Dennis C. Brown

* By Hand Delivery